

REMARKS

Claims 2 and 3 have been canceled. Claim 4, and amended claims 1 and 5-9 are in this application.

Claims 1, and 3-9 were rejected under 35 U.S.C. 102(e) as being anticipated by Colby et al. (U.S. Patent No. 6,625,643).

Amended independent claim 1 recites in part the following:

"a communication control unit for receiving indication data corresponding to the delivery condition to be designated by the delivery designating means from a delivery apparatus and supplying the received indication data to the delivery designating means for use in designating the delivery condition, including one of the transmission band and the transmission medium,

wherein the indication data includes a number of audiences that is calculated based on information stored in profile data and/or watching/listening history data that correspond to the transmission band and the transmission medium." (Emphasis added.)

Accordingly, in the apparatus of claim 1, the indication data "includes a number of audiences that is calculated based on information stored in profile data and/or watching/listening history data that correspond to the transmission band and the transmission medium." (Emphasis added.) It is believed that in explaining the above 102 rejection the Examiner asserted that Colby et al. and, in particular, lines 25-30 of column 5, lines 30-45 of column 27, and columns 21 and 22 thereof, disclose such feature of amended claim 1. It is respectfully submitted that such relied upon portions of Colby et al. do not specifically disclose "the indication data includes a number of audiences that is

calculated based on information stored in profile data and/or watching/listening history data that correspond to the transmission band and the transmission medium," as in claim 1. Although Colby et al. appears to indicate that the "maximum client count" is provided or utilized (see line 28 of column 5 of Colby et al.), Colby et al. does not appear to specifically disclose that such maximum client count is "calculated based on information stored in profile data and/or watching/listening history data that correspond to the transmission band and the transmission medium."

Accordingly, it is respectfully submitted that claim 1 is distinguishable from Colby et al. as applied by the Examiner.

For reasons similar to or somewhat similar to those previously described with regard to claim 1, it is also respectfully submitted that amended independent claims 5-9 are also distinguishable from Colby et al. as applied by the Examiner.

Claim 4 is dependent from amended independent claim 1. Accordingly, it is also respectfully submitted that dependent claim 4 is distinguishable from Colby et al. as applied by the Examiner for at least the reasons previously described.

As it is believed that all of the rejections set forth in the Official Action have been overcome, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that the Examiner telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which the Examiner might have.

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If there are any charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

By 

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